

House Study Bill 141 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act relating to marital agreements, and including effective
2 date and applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 249A.3, subsection 11, paragraph d, Code
2 2013, is amended to read as follows:

3 *d.* Unless a surviving spouse is precluded from making an
4 election under the terms of a ~~premarital~~ marital agreement as
5 defined in section 596.1, the failure of a surviving spouse to
6 take an elective share pursuant to chapter 633, division V,
7 constitutes a transfer of assets for the purpose of determining
8 eligibility for medical assistance to the extent that the value
9 received by taking an elective share would have exceeded the
10 value of the inheritance received under the will.

11 Sec. 2. Section 596.1, Code 2013, is amended to read as
12 follows:

13 **596.1 Definitions.**

14 As used in this chapter:

15 1. "Marital agreement" means any of the following:

16 a. A premarital agreement.

17 b. An amendment to a premarital agreement made between
18 present spouses, but only relating to post-death matters.

19 c. An agreement or an amendment to an agreement between
20 present spouses, but only relating to post-death matters.

21 2. "Party" means a person who has entered into a marital
22 agreement.

23 3. "Post-death matter" includes but is not limited to the
24 disposition of the parties' individually or jointly owned
25 assets upon the death of either or both parties; the making of
26 a will, trust, or other arrangements for the disposition of
27 property upon the death of either or both parties; ownership
28 rights in life insurance policies and retirement plans and the
29 disposition of the death benefits of any such policy or plan;
30 and the limitation or expansion of spousal elective shares
31 pursuant to chapter 633, division V.

32 ~~1.~~ 4. "Premarital agreement" means an agreement between
33 prospective spouses made in contemplation of marriage and to be
34 effective upon marriage.

35 ~~2.~~ 5. "Property" means an interest, present or future,

1 legal or equitable, vested or contingent, in real or personal
2 property, including income and earnings.

3 Sec. 3. Section 596.2, Code 2013, is amended to read as
4 follows:

5 **596.2 Construction and application.**

6 This chapter shall be construed and applied to effectuate
7 its general purpose ~~to make uniform the law with respect to~~
8 ~~premarital agreements.~~

9 Sec. 4. Section 596.3, Code 2013, is amended to read as
10 follows:

11 **596.3 Short title.**

12 This chapter may be cited as the "~~Iowa Uniform Premarital~~
13 ~~Marital Agreement Act~~".

14 Sec. 5. Section 596.4, Code 2013, is amended to read as
15 follows:

16 **596.4 Formalities.**

17 1. a. A premarital marital agreement must be in writing
18 and, must be signed by both prospective spouses. It parties,
19 and must contain the date that each party signed the marital
20 agreement. Each party's signature must be witnessed or
21 acknowledged by one of the following methods, as applicable:

22 (1) Witnessed by a competent person, as described in section
23 633.280, who, in the presence of the signing party, witnessed
24 the signing of the agreement by the party or by another person
25 acting on behalf of the party at that party's direction.

26 (2) Acknowledged before a notarial officer within this
27 state.

28 b. The witnessing or acknowledgment language may be in
29 substantially the following form:

30 **THIS DOCUMENT MUST BE EITHER WITNESSED OR ACKNOWLEDGED**

31 **WITNESS STATEMENT**

32 I declare that the parties who signed this document are
33 personally known to me, and that they signed this marital
34 agreement in my presence. I further declare that I am at least
35 sixteen years of age or older.

H.F. _____

1 Witness #1: Signature: _____
2 Date: _____
3 Print Name: _____
4 Telephone: _____
5 Address: _____
6 Witness #2: Signature: _____
7 Date: _____
8 Print Name: _____
9 Telephone: _____
10 Address: _____

11 ACKNOWLEDGMENT

12 STATE OF IOWA, _____ COUNTY, ss:

13 On this _____ day of _____ (month), _____ (year), the
14 said _____, and _____, known to
15 me (or satisfactorily proven) to be the parties named in the
16 foregoing instrument, personally appeared before me, a Notary
17 Public, within and for the State and County aforesaid, and
18 acknowledged that they freely and voluntarily executed the same
19 for the purposes stated therein.

20 2. A marital agreement between present spouses must be
21 signed by both parties prior to the filing of an action for
22 dissolution of marriage, for legal separation, or for separate
23 maintenance.

24 3. A marital agreement is enforceable without consideration
25 ~~other than the marriage.~~

26 4. Both parties to the a marital agreement shall execute all
27 documents necessary to enforce the agreement.

28 Sec. 6. Section 596.5, Code 2013, is amended to read as
29 follows:

30 **596.5 Content.**

31 1. Parties Subject to the limitations of a marital agreement
32 between present spouses, which as specified in section 596.1,
33 subsection 1, shall only relate to post-death matters, parties
34 to a ~~premarital~~ marital agreement may contract with respect to
35 the following:

1 a. The rights and obligations of each of the parties in any
2 of the property of either or both of them whenever and wherever
3 acquired or located.

4 b. ~~The right~~ rights of possession, ownership, or control,
5 including but not limited to the rights to buy, sell, use,
6 transfer, make a gift of, exchange, abandon, lease, consume,
7 expend, assign, create a security interest in, mortgage,
8 encumber, dispose of, or otherwise manage and control property.

9 c. The disposition of property upon separation, dissolution
10 of the marriage, death, or the occurrence or nonoccurrence of
11 any other event.

12 d. The making of a will, trust, or other arrangement to
13 carry out the provisions of the marital agreement.

14 e. The ownership rights in ~~and disposition of the death~~
15 ~~benefit from~~ a life insurance policy and the establishment of
16 rights of beneficiaries to the benefits of such policy.

17 f. The rights and obligations in benefits available or to be
18 available under an employee benefit or retirement plan, except
19 to the extent federal law prevents a binding agreement with
20 respect to such rights and obligations.

21 ~~f.~~ g. The choice of law governing the construction of the
22 agreement.

23 ~~g.~~ h. Any other matter, including the personal rights and
24 obligations of the parties, not in violation of public policy
25 or a statute imposing a criminal penalty.

26 2. A marital agreement is not enforceable unless the
27 agreement contains a statement of the types of rights that
28 could be affected by the marital agreement in an all capital
29 letter typeface and font size as large as the largest typeface
30 and font contained in the document. The following statement or
31 a statement of like import contained within the document shall
32 be acceptable for this purpose:

33 BE ADVISED, BY SIGNING THIS DOCUMENT, YOU MAY BE GIVING
34 UP LEGAL RIGHTS, SUCH AS THE RIGHTS TO OWN OR OCCUPY YOUR
35 HOMESTEAD, RIGHTS TO A STATUTORY SHARE OF YOUR SPOUSE'S ASSETS

1 UPON DEATH, RIGHTS TO COURT DETERMINATIONS OF DISTRIBUTIONS OF
2 PROPERTY UPON DISSOLUTION OF MARRIAGE, AND OTHER RIGHTS YOU
3 MAY HAVE BY REASON OF MARRIAGE. YOU MAY ALSO BE EXPANDING OR
4 RESTRICTING THOSE TYPES OF RIGHTS OR EXPANDING OR RESTRICTING
5 THE COURT'S POWERS TO DETERMINE THESE ISSUES.

6 ~~2.~~ 3. The right of a spouse or child to support, whether
7 during the lifetime or after the death of a party, shall not be
8 adversely affected by a ~~premarital~~ marital agreement.

9 Sec. 7. Section 596.6, Code 2013, is amended to read as
10 follows:

11 **596.6 Effective date of agreement.**

12 1. A ~~premarital~~ marital agreement becomes effective upon
13 the marriage, if signed by both of the parties prior to the
14 marriage.

15 2. If a marital agreement is signed by the parties during
16 their marriage, the marital agreement becomes effective on the
17 effective date stated in the marital agreement. If no such
18 effective date is stated in the marital agreement, the marital
19 agreement becomes effective upon the latest date of signature
20 by the parties.

21 Sec. 8. Section 596.7, Code 2013, is amended to read as
22 follows:

23 **596.7 Revocation and amendment.**

24 1. Revocation. After marriage, a ~~premarital~~ marital
25 agreement may be revoked, in whole or in part, only as follows:

26 ~~1.~~ a. By a written agreement signed by both spouses
27 parties. The revocation is enforceable without consideration.

28 ~~2.~~ b. ~~To revoke a premarital~~ By either party to the marital
29 agreement without the consent of the other spouse party, the
30 ~~person seeking revocation must prove one or more~~ if the party
31 seeking revocation proves any of the following:

32 ~~a.~~ (1) The ~~person~~ party seeking revocation did not execute
33 the marital agreement voluntarily.

34 ~~b.~~ (2) The marital agreement was unconscionable when it
35 was executed.

1 ~~e-~~ (3) Before the execution of the marital agreement the
2 person party seeking revocation was not provided a fair and
3 reasonable disclosure of the property or financial obligations
4 of the other spouse party; and the person party seeking
5 revocation did not have, or reasonably could not have had, an
6 adequate knowledge of the property or financial obligations of
7 the other spouse party; and such disclosure would have been
8 material to the decision of the party seeking revocation to
9 execute the marital agreement.

10 (4) Before the execution of the marital agreement the party
11 seeking revocation was not given a reasonable opportunity to
12 obtain independent legal representation with respect to the
13 marital agreement.

14 2. Revocation severable. If the revocation of one or
15 more provisions of the marital agreement, or the application
16 of the revocation of such a provision to a party is upheld
17 by the court, any revoked provision shall be severed from
18 the remainder of the marital agreement, unless the marital
19 agreement states otherwise, and shall not affect the remaining
20 provisions.

21 3. Amendment. A marital agreement may be amended by
22 a written agreement signed by both parties. An amendment
23 is subject to the limitations of an amendment to a marital
24 agreement which, as specified in section 596.1, subsection 1,
25 shall only relate to post-death matters, and subject to the
26 enforcement provisions of section 596.8.

27 4. Limits on amendment and revocation. A marital
28 agreement cannot be amended or revoked by an agent, guardian,
29 conservator, or other legal representative of either party, or
30 after the death of either party, except as provided pursuant
31 to subsection 1, paragraph "b", relating to revocation without
32 the consent of the other party.

33 Sec. 9. Section 596.8, Code 2013, is amended to read as
34 follows:

35 **596.8 Enforcement.**

1 1. A ~~premarital~~ marital agreement is not enforceable if the
2 person or party against whom enforcement is sought proves any
3 of the following:

4 ~~1. The person did not execute the agreement voluntarily.~~

5 ~~2. The agreement was unconscionable when it was executed.~~

6 ~~3. Before the execution of the agreement the person was~~
7 ~~not provided a fair and reasonable disclosure of the property~~
8 ~~or financial obligations of the other spouse; and the person~~
9 ~~did not have, or reasonably could not have had, an adequate~~
10 ~~knowledge of the property or financial obligations of the other~~
11 ~~spouse that such person or party could have revoked the marital~~
12 ~~agreement pursuant to section 596.7, subsection 1, paragraph~~
13 ~~"b", relating to revocation without consent of the other party.~~

14 2. If a provision one or more of the provisions of the
15 marital agreement or the application of the provision to a
16 party is found determined by the court to be unenforceable
17 pursuant to this section, the unenforceable provision shall be
18 severed from the remainder of the marital agreement, unless the
19 marital agreement states otherwise, and shall not affect the
20 remaining provisions, or application, of the agreement which
21 can be given effect without the unenforceable provision.

22 3. Other than the determination of the issue of
23 unconscionability, actions with respect to enforcement of a
24 marital agreement shall be decided by the court as a matter of
25 equity.

26 Sec. 10. Section 596.9, Code 2013, is amended to read as
27 follows:

28 **596.9 Unconscionability.**

29 In any action under this chapter to revoke or enforce a
30 ~~premarital~~ marital agreement, the issue of unconscionability of
31 a ~~premarital~~ marital agreement shall be decided by the court
32 as a matter of law.

33 Sec. 11. Section 596.10, Code 2013, is amended to read as
34 follows:

35 **596.10 Enforcement — void marriage.**

1 If a marriage is determined to be void, an agreement that
2 would otherwise have been a ~~premarital~~ marital agreement
3 is enforceable only to the extent necessary to avoid an
4 inequitable result.

5 Sec. 12. Section 596.11, Code 2013, is amended to read as
6 follows:

7 **596.11 Limitation of actions.**

8 Any statute of limitations applicable to an action asserting
9 a claim for relief under a ~~premarital~~ marital agreement is
10 tolled during the marriage of the parties ~~to the agreement~~.
11 However, equitable defenses limiting the time for enforcement,
12 including laches and estoppel, are available to either party.

13 Sec. 13. NEW SECTION. 596.11A Scope of chapter — bona fide
14 purchasers and distribution of assets.

15 1. This chapter shall not affect adversely the rights of a
16 bona fide purchaser for value to the extent that this chapter
17 applies to a transfer or conveyance of property by a party to a
18 marital agreement to a nonparty.

19 2. A financial institution, insurance company, investment
20 company as defined in the federal Investment Company Act of
21 1940, 15 U.S.C. § 80a-3, or broker-dealer registered under
22 the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m
23 et seq., may distribute any assets, in accordance with the
24 terms of the contract with a party to a marital agreement or in
25 accordance with any effective beneficiary designation without
26 liability to either party to the marital agreement.

27 Sec. 14. Section 596.12, Code 2013, is amended to read as
28 follows:

29 **596.12 Effective date and applicability.**

30 1. This As it relates to premarital agreements, this chapter
31 takes effect on January 1, 1992, and applies to any premarital
32 agreement executed on or after that date, in accordance
33 with the statutory provisions in effect as of the date of
34 the premarital agreement. This chapter does not affect the
35 validity under Iowa law of any premarital agreement entered

1 into prior to January 1, 1992.

2 2. As it relates to amendments to premarital agreements
3 and to marital agreements and amendments to marital agreements
4 entered into after marriage, this chapter takes effect July 1,
5 2013, and applies to any such amendments or agreements executed
6 on or after that date.

7 Sec. 15. Section 598.21, subsection 5, paragraph 1, Code
8 2013, is amended to read as follows:

9 1. The provisions of ~~an antenuptial~~ a premarital agreement.

10 Sec. 16. Section 598.21A, subsection 1, paragraph i, Code
11 2013, is amended to read as follows:

12 i. The provisions of ~~an antenuptial~~ a premarital agreement.

13 Sec. 17. Section 633.246A, Code 2013, is amended to read as
14 follows:

15 **633.246A Medical assistance eligibility.**

16 Unless precluded from doing so under the terms of a
17 ~~premarital~~ marital agreement as defined in section 596.1, the
18 failure of a surviving spouse to make an election under this
19 division constitutes a transfer of assets for the purpose of
20 determining eligibility for medical assistance pursuant to
21 chapter 249A to the extent that the value received by making
22 the election would have exceeded the value of property received
23 absent the election.

24 EXPLANATION

25 This bill amends Code chapter 596 (premarital agreements)
26 to allow for marital agreements which include premarital
27 agreements, certain amendments to premarital agreements, and
28 the creation of agreements or amendments to agreements between
29 present spouses. An amendment to a premarital agreement or an
30 agreement or amendment to an agreement between present spouses
31 is effective only to the extent it relates to post-death
32 matters. The bill provides for protection of the parties
33 including that the agreement must not be unconscionable at the
34 time it is entered into; the agreement must include a provision
35 that states the rights a party may be giving up; an agent is

1 prohibited from amending or revoking a marital agreement on
2 behalf of a party; and unconscionability is determined by the
3 court as a matter of law while all other matters are determined
4 in equity. The bill provides for revocation and amendment of
5 marital agreements, places limits on amendments and revocations
6 of marital agreements, provides for enforcement, provides
7 for scope of the chapter regarding bona fide purchasers and
8 distribution of assets, and makes conforming changes.

9 The bill continues the applicability of the amended Code
10 chapter to any premarital agreement executed on or after
11 January 1, 1992, in accordance with the statutory provisions
12 in effect as of the date of the premarital agreement. The
13 bill does not modify the inapplicability of the Code chapter
14 to any premarital agreement entered into prior to January
15 1, 1992. Additionally, the bill provides that as the Code
16 chapter relates to amendments to premarital agreements and to
17 marital agreements entered into after marriage, the amended
18 Code chapter takes effect July 1, 2013, and applies to any such
19 amendments or agreements executed on or after that date.

20 The bill also makes conforming changes throughout the Code.